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RECENT CASE NOTES

ADMINISTRATIVE LAW—REMOVAL OF PUBLIC OFFICER—FAIRNESS OF HEARING.—The relator, a police captain, by sending a letter directly to the defendant, the acting mayor of the City of Buffalo, had disregarded a departmental rule requiring communications to be made through the Chief of Police. For this he had been demoted to the rank of patrolman by the defendant. Notice and a hearing had been given, according to the city charter, and certiorari proceedings were brought to review the trial. The evidence showed that, although ill will existed between the relator and the defendant, the latter had acted as judge in the proceedings which found the former guilty. *Held*, that the prejudice of the acting mayor was insufficient to disqualify him as judge, but that there had been on the merits no such violation of the departmental rules as to warrant demotion. *People v. Kreinheder* (1921) 197 App. Div. 887, 189 N. Y. Supp. 767.

In the absence of statute, the power of removal from public office is incidental to the power of appointment. *Burnap v. United States* (1920) 252 U. S. 512, 40 Sup. Ct. 374; *Kydd v. San Francisco* (1918) 37 Calif. App. 598, 174 Pac. 88. An incumbent for an indefinite term holds office at the discretion of the person holding the appointing power. *Barbor v. County Court* (1920) 85 W. Va. 359, 101 S. E. 721. Where however, the term is fixed by law, removal is possible only as the state constitution or statute may direct. *State v. Hough* (1915) 103 S. C. 87, 87 S. E. 436. Police departments ordinarily derive their organization from city charters, which designate a method of removal. Thus where notice and a hearing are provided, a failure to comply with the statute renders a dismissal of no effect. *State v. Wilkinson* (1921) 59 Mont. 327, 196 Pac. 878. The hearing must be fair. *Eisberg v. Mayor* (1919, Sup. Ct.) 92 N. J. L. 321, 105 Atl. 716. Where a board of police commissioners conduct the hearing, an interested commissioner may not sit as judge. *People v. Roosevelt* (1897) 23 App. Div. 533, 48 N. Y. Supp. 578. But the mere filing of charges by a commissioner does not thus disqualify him as a judge. *State v. Burney* (1917) 269 Mo. 602, 191 S. W. 981. The removal proceeding is reviewable by a court which will determine whether the finding of fact is supported by the evidence. *McCarthy v. Board* (1915) 38 R. I. 385, 95 Atl. 921. But where any evidence sustains the finding, the reviewing court will not pass on the facts. *Cole v. City of Portland* (1920) 96 Ore. 645, 190 Pac. 720. The sufficiency of the cause of removal has been held to be a question of law for the court. *Stanley v. Fiscal Court* (1921) 190 Ky. 495, 227 S. W. 813. Hence a removal will not be sustained where the accused has been guilty of a mere technical violation of the police regulation. *People v. McAdoo* (1907) 117 App. Div. 438, 102 N. Y. Supp. 656. The court in the instant case quite properly reinstated the relator, for a slight infraction of department rules should not call for such a severe punishment as demotion. The case might well have held that the Mayor was too prejudiced against the relator to act as judge at the hearing.

ADMIRALTY—SEAMEN'S RIGHT TO NEW CONTRACT BEFORE COMPLETION OF VOYAGE.—The libellants, seamen, signed for a six months' voyage to an African port and return to the United States. The vessel, delayed by trouble, was at Accra, on the African West coast, at the expiration of the six months. The crew demanded double wages for the return trip and the master acceded under protest. Upon landing in Philadelphia he refused to abide by the agreement. *Held*, that